

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC
–ACQUISITION AND OPERATION EXEMPTION–
FORMER COLUMBIA TERMINALS, KEARNY, NJ

Decided: August 13, 2003

The New Jersey Department of Environmental Protection (NJDEP) has filed a petition to stay the effective date of the exemption invoked by notice filed in this proceeding by New Jersey Rail Carrier LLC (NJ Rail). The exemption is due to go into effect on August 14, 2003. A stay will be granted to allow the Board to obtain additional information on the transaction.

BACKGROUND

By notice filed on August 7, 2003, NJ Rail, neither a railroad nor a person in control of a railroad, invoked the class exemption at 49 CFR 1150.31 to lease and to operate railroad track, formerly known as the Columbia Terminals, in the Town of Kearny, Hudson County, NJ. The track begins at a switch connection to a line of Consolidated Rail Corporation in the Town of Kearny and extends over various lengths of track to their stub ends for a total distance of approximately 2,250 feet. NJ Rail states that its projected revenues will not exceed those of a Class III railroad. NJ Rail also alleges that its projected revenues will not exceed \$5 million annually and that therefore it need not give notice to employees pursuant to 49 CFR 1150.32(e). NJ Rail will lease the track from Amcol Realty Co., Inc., of Livingston, NJ.

By petition filed on August 12, 2003, NJDEP asks the Board to stay the effectiveness of the exemption to give NJ Rail an opportunity to provide information that would indicate whether NJ Rail would be conducting operations as a bona fide rail carrier under 49 U.S.C. 10102(5) or merely as “a shipper in the solid waste disposal industry whose primary intent is to utilize the preemption provision of 49 U.S.C. 10501(b) to evade the State of New Jersey’s environmental safety and health statutes and regulations.” NJDEP argues that the notice is defective in not providing enough of a description of NJ Rail’s planned operations to allow the Board to determine whether NJ Rail will actually be operating as a railroad and whether environmental review by the Board is warranted.

NJ Rail replied in opposition to the NJDEP petition on August 13, 2003. NJ Rail maintains that its notice is adequate. NJ Rail states that it intends to operate as a common carrier railroad “handling intermodal shipments in the industrial park which it will serve.” It also states that it expects to handle containerized demolition debris and that it proposes to handle lumber, chemicals, aggregates and other freight tendered for intermodal transportation.

DISCUSSION AND CONCLUSIONS

A stay will be granted to allow the parties to submit additional, more specific information relating to NJ Rail’s proposed operations. The environmental certification submitted by NJ Rail is incomplete, and NJDEP has raised serious issues regarding the nature of the proposed operations and the potential impacts that could result from the exemption. In its reply, NJ Rail for the first time discloses that it will engage in intermodal operations but it still has not adequately addressed the nature of its proposed operations in light of NJDEP’s questions regarding whether NJ Rail’s proposed operations would qualify it as a railroad and NJ Rail’s characterization of itself in its reply as an intermodal transfer facility. Nor has NJ Rail provided sufficient information to enable the Board to determine the extent to which environmental review is required. Thus, the Board needs additional, more specific information on the operations NJ Rail proposes to conduct to allow the Board to make an informed decision regarding environmental review for this action and to assess whether NJ Rail properly has invoked the Board’s class exemption for this transaction.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the notice in this proceeding is stayed pending further order of the Board.
2. NJ Rail may file additional information as outlined in this decision by September 12, 2003. Any reply to the NJ Rail additional filing will be due 20 days after that filing.
3. This decision is effective on August 13, 2003.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary